

BENITO D. CHUA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER BIENVENIDO V. HERMOGENES AND NESTLE PHILIPPINES, INC., RESPONDENTS.

G.R. No. 105775. February 08, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 10 September 1987, the Union of Filipino Employees, of which petitioner Benito D. Chua was a member, declared a strike against the private respondent company, Nestle Philippines, Inc. During the strike, several of the striking employees threw stones at the trucks entering and leaving the company premises. One truck, whose driver was rendered unconscious by a stone hitting him on the head, rammed a private vehicle and crashed into a beauty parlor resulting in the death of three (3) persons and extensive damage to private property.

Consequently, a criminal complaint for multiple murder and frustrated murder was filed against petitioner and several other employees who were believed to be responsible for the stoning incident which resulted in the deaths and property damage. The criminal complaint was dismissed for insufficiency of evidence. The strike itself was, however, declared illegal in two (2) decisions of the National Labor Relations Commission ("NLRC") which were affirmed by the Supreme Court.[1]

On 17 December 1987, the union and its striking members offered to return to work and were readmitted by the company except sixty-nine (69) union officers and thirty-three (33) union members, including petitioner. Subsequently, the union's counsel wrote to the private respondent requesting the reinstatement of five (5) employees, including petitioner. The request, however, was denied. On 5 February 1988, petitioner received a notice of dismissal from private respondent for having participated in the illegal strike.

Two days later, petitioner initiated a complaint for illegal dismissal against private respondent company. On 22 September 1989, the Labor Arbiter rendered a decision finding that petitioner had been validly dismissed. It was held that the evidence introduced by private respondent, in the form of the testimony of Mr. Maniego, Personnel Supervisor of its Cabuyao Plant, that he positively saw and identified petitioner as one of the union members who actively participated and manned the barricades during the strike is "a concrete manifestation of an illegal act that is frowned upon by law." At the same time, however, the Labor Arbiter awarded petitioner "financial assistance" in the form of backwages from the time of his dismissal (in the amount of P75,920.00) plus separation pay equivalent to one-half (1/2) month salary for every year of service (in the amount of P13,376.00).

Wishing to be reinstated also, petitioner appealed the Labor Arbiter's decision to the NLRC which, however, affirmed in toto the decision of the Labor Arbiter.

In the present Petition for Certiorari, petitioner argues that the NLRC committed grave abuse of discretion in rendering its Decision dated 18 May 1992 which affirmed the decision of the Labor Arbiter dated 22 September 1989, denying him reinstatement though granting him "financial assistance."

Petitioner contends that no substantial evidence exists on record to support the findings of the NLRC. We find this contention to be without merit. Petitioner's participation in the illegal strike and his commission of illegal acts while the strike was in progress, i.e., he participated in the barricade which barred people from entering and/or leaving the employer's premises, had been sufficiently established by substantial evidence, including the testimony of Mr. Maniego, Personnel Supervisor at the Cabuyao Plant. Mr. Maniego testified, among other things, that he was not able to report to work because of the presence of the barricade. The law prohibits any person engaged in picketing from obstructing free ingress to or egress from the employer's premises for lawful purposes.[2]

While the criminal complaint where petitioner was included as one of the accused was dismissed for insufficiency of evidence, the Court considers that the dismissal of the criminal complaint did not preclude a finding by the competent administrative authorities, that petitioner had indeed committed acts inimical to the interest of his employer.

In *Pepsi Cola Bottling Company of the Philippines v. Guanzon*,[3] we held that: "Private respondent's guilt or innocence in the criminal case is not determinative of the existence of a just or authorized cause for his dismissal". This doctrine follows from the principle that the quantum and weight of evidence necessary to sustain conviction in criminal cases are quite different from the quantum of evidence necessary for affirmance of a decision of the Labor Arbiter and of the NLRC.

Since petitioner's participation in the unlawful and violent strike was amply shown by substantial evidence, the NLRC was correct in holding that the dismissal of petitioner was valid being based on lawful or authorized cause.

We disagree, however, with the award by the Labor Arbiter of "financial assistance" to petitioner and with the NLRC's affirmance of that portion of the award. Under the circumstances of this case, the Court considers that such award of "financial assistance" was obviously unjustified. This Court has several times ruled that "financial assistance", whatever form it might assume, is permissible where the employee has been validly dismissed, only in those instances where the cause of dismissal was something other than serious misconduct on the part of the employee or other cause reflecting adversely on the employee's moral character. Thus, in *Cosmopolitan Funeral, Inc. v. Maalat*,[4] this Court clarified the instances where "financial assistance" to an employee who had been dismissed for cause may be awarded by the Labor Arbiter or the NLRC. The Court declared:

"In *Philippine Long Distance Telephone Company (PLDT) v. NLRC*, (164 SCRA 671 [1988]), this Court reexamined the doctrine in the aforecited *Firestone* and *Soco* cases and other previous cases that employees dismissed for cause are nevertheless entitled to separation pay on the ground of social and compassionate justice. In abandoning this doctrine, the Court held, and we quote:

'x x x We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect of rewarding rather than punishing the erring employee for his offense x x x.'"[5] (Underscoring supplied)

In the case at bar, petitioner's participation in the unlawful and violent strike, which strike resulted in multiple deaths and extensive property damage, constituted serious misconduct on his part; accordingly, the award of "financial assistance" was bereft of basis and would moreover render the finding by the Labor Arbiter and the

NLRC of just or authorized cause for termination of petitioner's services merely illusory.

We are aware that in the instant case, private respondent did not appeal from the decisions of the Labor Arbiter and the NLRC. Nevertheless, because the resolution of the issue of the lawfulness of the award of "financial assistance" to petitioner is essential if this Court is to render substantial justice as between the parties in this case, this Court feels compelled to pass upon that issue and has ruled accordingly.[6]

It is scarcely necessary to add that there is no legal impediment to the private respondent making a grant on a voluntary and ex gratia basis, in any amount it may feel appropriate, to petitioner. What the Court is stressing here is that, given the circumstances of this case and under prevailing jurisprudence, the Labor Arbiter and NLRC had no authority legally to compel the private respondent to pay to petitioner the "financial assistance" which they awarded.

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Certiorari for lack of merit. At the same time, finding grave abuse of discretion on the part of the NLRC in affirming the Labor Arbiter's award of "financial assistance" to petitioner, the Court Resolved to MODIFY the Decision of the NLRC of 18 May 1992 by deleting the portion thereof affirming the award of "financial assistance" by the Labor Arbiter, without prejudice to private respondent's making a grant on a purely voluntary and ex gratia basis, to petitioner. In all other respects, the NLRC Decision is hereby AFFIRMED. Costs against petitioner.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Union of Filipro Employees v. Nestle Philippines, Inc., 192 SCRA 396 (1990).

[2] 2 Article 264[e], Labor Code.

[3] 172 SCRA 571 (1989); see also, Starlite Plastic Industrial Corporation v. NLRC 171 SCRA 315 (1989); Sea Land Service Incorporated v. NLRC, 136 SCRA 544 (1985); San Miguel Corp. v. NLRC, 128 SCRA 180 (1984); Philippine Geothermal Inc. v. NLRC, 117 SCRA 692 (1982).

[4] 187 SCRA 108 (1990).

[5] see also: Benguet Corporation v. NLRC, G.R. No. 84974, 8 May 1992; De Vera v. NLRC, 191 SCRA 632 (1990); Nasipit Lumber Co., Inc. v. NLRC, 177 SCRA 93 (1989); Oasis Academy v. NLRC, 172 SCRA 468 (1989); Eastern Paper Mills, Inc. v. NLRC, 170 SCRA 595 (1989); Philippine National Construction Corporation v. NLRC, 170 SCRA 207 (1989).

[6] Hydro Resources Contractors Corp. v. Court of Appeals, 204 SCRA 309 (1991); Abra Valley College, Inc. v. Aquino, 162 SCRA 106 (1988); Ortigas, Jr. v. Lufthansa German Airlines, 64 SCRA 610 (1975).

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